
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

LONELL SHEPHARD,

Plaintiff,

versus

REGINALD GOINGS, *et al.*,

Defendants.

CIVIL ACTION NO. 1:09-CV-554

**MEMORANDUM ORDER PARTIALLY ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Lonell Shephard, an inmate formerly confined at the Gist State Jail, proceeding *pro se*, brought this lawsuit pursuant to 42 U.S.C. § 1983.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed without prejudice for failing to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties. However, plaintiff did file a motion to dismiss the case.

Pursuant to Federal Rule of Civil Procedure 41(a), plaintiff is entitled to dismiss the action prior to the service of an answer or a motion for summary judgment. As of this date, the defendants have not been served. Accordingly, plaintiff's motion to dismiss should be granted.

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED** to the extent it recommends dismissal without prejudice. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

SIGNED at Beaumont, Texas, this 6th day of February, 2010.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE